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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,165	02/09/2004	Nobuya Nakagawa	248538US	6760

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EXAMINER	
FORD, JOHN K	

ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/773,165	NAKAGAWA ET AL.	
	Examiner	Art Unit	
	John K. Ford	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☑ Claim(s) 1-4 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☑ Claim(s) 1-4 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☑ Claim(s) 1-4 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☑ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☑ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☑ Certified copies of the priority documents have been received in Application No. 10/198460

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☑ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☑ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The first species of Figures 2-8 was claimed and patented in parent application SN 10/198460, now USP 6,739,388. None of the current claims are readable on that species.

This application contains claims directed to the following patentably distinct species of the claimed invention: second species of Figures 9-15 (as shown), third species of Figures 16-17 (as shown), fourth species of Figures 9-15 with the modified air-mix damper of Figure 18 and fifth species of Figures 16-17 with the modified air-mix damper of Figure 18.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 1 appears to be generic to the second-fifth species identified above ~~generic~~.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The "superposed" limitation in claim 11 is not understood. Does it mean that evaporator 12 and heater 14 cannot be located one immediately above the other in a vertical direction, or does it mean that, if any horizontal line is drawn across Figure 1, no portion of evaporator 12 and heater 14 will intersect that horizontal line simultaneously? Please explain in detail what " not superposed when seen in a vehicle front – to – back direction" is supposed to mean. The Examiner finds the phrase ambiguous for the reasons set forth above.

It is also unclear in claim 1 whether an air-conditioning system, per se, is being claimed or whether an air-conditioning system and a vehicle combination is being claimed.

If the vehicle is not part of the claim then limitations like "vehicle front – to- back direction " as found in claim 1 will not be given patentable weight.

Applicant claims the evaporator is mounted in the upper front portion of the casing. Isn't it really in the upper middle portion of the casing as shown in Figure 9?

Applicant in the last few clauses of claim 1 claims " the rear side" and " the front side" of the heater core. Applicant has not defined which side constitutes the rear and which side constitute the front of the heater core. In claim 2 "the rate of a portion" is unusual diction. The examiner would suggest rewriting the rate limitation in claim 2 using the word " proportion". Claim 3 is vague. Funnels have an almost infinite variety of shapes.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

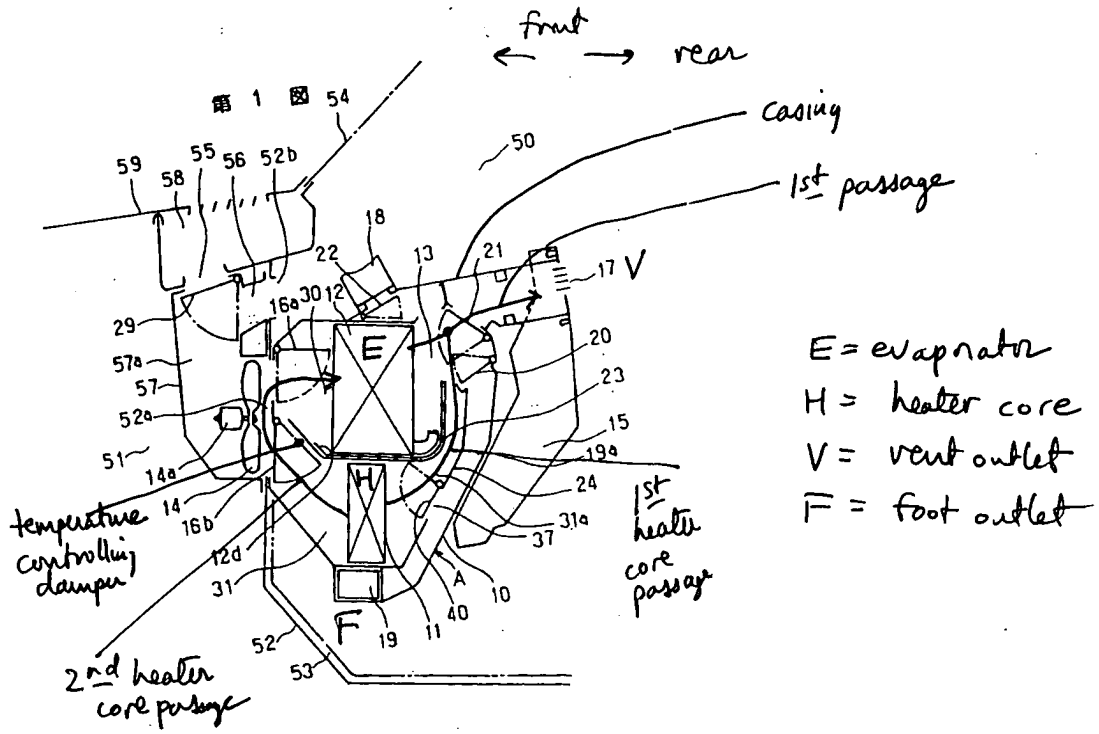
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

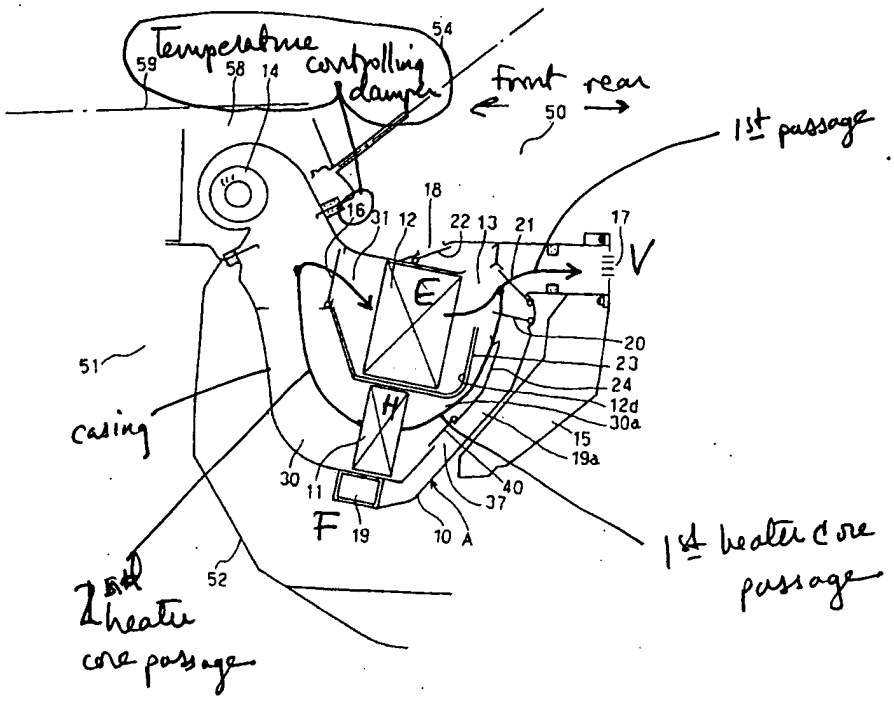
Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 61-188214 or JP 60-157914.

See Figure 1 of JP '214 reproduced below, with the relevant limitations from claims 1 and 2 labeled. A similar Figure is also shown for JP'914.

61-188214



60-157914


Temperature controlling damper
54
59
58
14
front
rear
50
1st passage
18
16
31
12
22
13
21
17
V
E
H
F
51
casing
20
23
24
12d
30a
15
19a
30
11
19
40
37
10
A
52
1st heater core passage
2nd heater core passage

Claim3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim1 above, and further in view of JP 10-288353.

JP '353 teaches a funnel-shaped condensate ~~plate~~ pan, which would have been obvious to have placed under the evaporator of either JP '214 or JP'914 to advantageously catch and drain the condensate which will inevitably form during hot humid weather.

Claim4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim1 above, and further in view of JP 10-264638 or JP 6-270644.

To have replaced the air mix damper 16 of JP '914 or 16a and /or 166 of JP '214 with an air-mix damper with a bent portion as taught by JP'638 or JP'644 to improve linearity of air-flow with respect to rotational angle of the air-mix door to permit improved control would have been obvious to one of ordinary skill.

Any inquiry concerning this communication should be directed to John Ford at telephone number 703 308-2636.

Ford/dl

June 8, 2004

John K. Ford
Primary Examiner